

## § 1160.603

(b) The referendum agent shall mail to each fluid milk processor that has properly registered to participate in the referendum:

(1) A ballot containing a description of the question(s) upon which the referendum is being held;

(2) Instructions for completing the ballot; and

(3) A statement as to the time within which the ballot must be mailed to the referendum agent.

### § 1160.603 Who may vote.

(a) Each person who was a fluid milk processor during the representative period, as determined by the Secretary, and who at the time of voter registration and when voting is processing and marketing commercially fluid milk products in consumer-type packages in the United States shall be entitled to vote in a referendum, and no such person shall be refused a ballot. Any person casting more than one ballot with conflicting votes shall thereby invalidate all ballots cast by such person in such referendum. Each person voting shall have registered with the referendum agent prior to the voting period. Each ballot cast shall contain a certification by the person casting the ballot that such person is qualified to vote. All information required on the ballot pertinent to the identification of the person voting must be supplied and certified to as being correct in order for the ballot to be valid.

(b) Voting by proxy or agent will not be permitted. However, the ballot of a fluid milk processor who is other than an individual may be cast by a person who is duly authorized to do so, and such ballot shall contain a certification by such person that the entity on whose behalf the ballot is cast was a fluid milk processor during the representative period. All information required on the ballot pertinent to the identification of the fluid milk processor on whose behalf the ballot is cast must be supplied and certified to as being correct in order for the ballot to be valid.

## 7 CFR Ch. X (1-1-05 Edition)

### § 1160.604 Duties of the referendum agent.

The referendum agent, in addition to any other duties imposed by this subpart, shall:

(a) For the purpose of adjusting the rate of assessment, determine and publicly announce prior to the voting period the total volume of fluid milk products marketed by all processors of fluid milk in the United States during the representative period and the portion of such volume that must be represented by those fluid milk processors voting in favor of the question included on the ballot if the referendum question is to pass.

(b)(1) Within 12 days after the deadline for registering to vote in the referendum, the referendum agent shall make available upon request a list of those fluid milk processors that properly registered. Any challenge of a processor's eligibility to vote must be received by the referendum agent within 17 days of the deadline for voter registration.

(2) If the voting eligibility of any fluid milk processor is challenged within the timeframe specified in § 1160.604(b)(1), the referendum agent shall review the challenge and make a final determination regarding the processor's eligibility to vote.

(3) Prior to the time of mailing ballots to fluid milk processors, the referendum agent shall prepare a final list of eligible voters and make such list available upon request.

(c) Verify the eligibility of all persons voting in the referendum by reviewing all ballots cast to assure that each ballot:

(1) Was mailed within the prescribed time;

(2) Contains all certifications required attesting to the eligibility of the person to vote, and that the person voting filed with the referendum agent prior to the voting period the advance registration required pursuant to § 1160.606(a)(1); and

(3) Was completed with respect to all necessary information pertinent to the identification of the person voting so that additional verification can be conducted by the referendum agent to substantiate the eligibility of each such person to vote.

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(d) Conduct further verification, as necessary, to determine the eligibility of each person to vote. Such verification may be completed by reviewing readily available sources of information, including the following:

- (1) Records of the Department;
- (2) Fluid milk processors' records; and
- (3) Any other reliable sources of information which may be available to the referendum agent.

(e) Further verify ballots to avoid a duplication of votes. The following criteria shall serve as a guide:

(1) Each fluid milk processor that is other than an individual shall be regarded as one person for voting purposes;

(2) No more than one vote may be cast on behalf of any one fluid milk processor; and

(3) In the event that more than one individual claim the right to vote and cast a ballot for a fluid milk processor, concurring votes of such individuals shall be treated as one vote while any conflicting votes shall thereby invalidate all ballots cast by such individuals.

[58 FR 62503, Nov. 29, 1993, as amended at 62 FR 3983, Jan. 28, 1997]

### § 1160.605 Scheduling of referendum.

A referendum shall be held:

- (a) Whenever prescribed by the order;
- (b) For the purpose of adjusting the rate of assessment:

(1) At the direction of the Secretary; or

(2) Upon request of the Board or upon request of any group of fluid milk processors that marketed during a representative period, as determined by the Secretary, 10 percent or more of the volume of fluid milk products marketed by all processors of fluid milk in the United States during that period; or

(c) For the purpose of suspending or terminating the order:

(1) At the direction of the Secretary; or

(2) Upon request of the Board or upon request of any group of fluid milk processors that marketed during a representative period, as determined by the Secretary, 10 percent or more of the volume of fluid milk products mar-

keted by fluid milk processors voting in the preceding referendum.

[62 FR 3984, Jan. 28, 1997]

### § 1160.606 Notice of referendum.

The referendum agent shall provide at least 30 days' notice of any referendum authorized by the Act by:

(a) Mailing to each known person processing fluid milk products a notice of referendum, which shall include:

(1) An advance registration form to be filed with the referendum agent prior to the voting period by any person choosing to vote in the referendum, with a statement as to the time within which the registration form must be mailed to the referendum agent;

(2) A copy of the final rule, when applicable;

(3) A sample ballot containing a description of the question(s) upon which the referendum is being held; and

(4) Rules for participating in the referendum, including a statement as to the time within which the ballot must be mailed to the referendum agent; and

(b) Giving public notice of the referendum:

(1) By furnishing press releases and other information to available media of public information (including but not limited to press, radio, and television facilities) announcing the time within which ballots must be completed and mailed to the referendum agent, eligibility requirements, required certifications to cast a valid ballot, where additional information, ballots and instructions may be obtained, and other pertinent information; and

(2) By such other means as the referendum agent may deem advisable.

### § 1160.607 Tabulation of ballots.

(a) The referendum agent shall verify the validity of all ballots cast in accordance with the instructions and requirements specified in §§ 1160.602 through 1160.606. Ballots that are not valid shall be marked "disqualified" with a notation on the ballot as to the reason for the disqualification.

(b) The total number of ballots cast, including the disqualified ballots, shall be ascertained. The number of ballots cast approving, the number of ballots cast disapproving, and the pounds of